

An Independent Marine Damage Survey by
NEWBERRY & ASSOC. MARINE SURVEYING CO.
P. O. Box 998 Seabrook, Texas 77586
Office 281-470-7577 Cell 281-543-9300

File #D2151001R

AMENDED DAMAGE REPORT

Dates Of Inspections: 09/04/2015, 10/12/2015, 10/13/2015 &
02/15/2016

Representing:
Howard (Wally) Scoggins
C/O John W. Havins
Havins & Associates, PC
2211 Norfolk, Suite 525
Houston, Texas 77098
W 713-650-3600
F 713-650-3601
jhavins@havinsassoc.com

Claim No: Markel American Insurance Co. Claim # 14C1019
Policy No: MHY00000219978
D.O.L. Reported between January 2014 and May 16, 2014

GENERAL VESSEL INFORMATION

Owner/insured: Howard (Wally) Scoggins
Business Address
1031 6th Street North5
Texas City, Texas 77590
M 281-413-9753
wscoggins@sesfoam.com

Name Of Vessel: No Name
Model: Donzi ZSF (38' Center Console Cuddy Cabin
Sport-Fish motor boat)
Builder: Donzi Marine
Where Built: Reported Crystal River, Florida
Year Built: 2006
Hull ID Number: US-DNAF1037K506
Official Number: Texas # TX 4950 AJ
Port of Registry: Not Seen On Hull (not required)
Reported:
LOA: 38'06"
Beam: 10'06"
Draft: 02'00" with motors up
Displacement: 12750 lbs without motors

VESSEL DESCRIPTION

A 38' fiberglass flybridge center console cuddy cabin sportfish motor yacht with triple 275 horsepower outboard gasoline engines. Steering from center console under fiberglass hard-top. Black hull with white decks and superstructure.

ENGINE DESCRIPTIONS

Triple Mercury 275 Verado

Model and Serial Numbers

Port:

Center:

Starboard:

LOCATION OF SURVEY

Dry docked on trailer at CLPBS (Clear Lake Power Boat Services) in Seabrook, Texas.

ALLEGATIONS AND SUMMARY OF EVENTS

The following is a brief synopsis of the incident as this Surveyor understands it occurred based on oral and written statements and documents taken or supplied by:

Mr. John W. Havins Counselor for Mr. Scoggins 713-650-3600.

Mr. Wally Scoggins owner/insured of subject boat 281-413-9753.

Mr. Ed Shy owner of CLPBS Seabrook, Texas 281-326-4800.

Mr. Scoggins reported that in January 2014 he put the subject boat on its trailer and parked the boat for the winter in front of his vacation summer home on Tiki Island, Galveston, Texas. Address 1123 Tiki Drive Galveston, Texas.

On or about May 16, 2014 when Mr. Scoggins was ready to launch the boat for the summer season he discovered that a plastic bag had clogged the drain hole and the boat had flooded with a significant amount of rain water while stored in front of his summer home. The interior of the cuddy cabin and machinery compartments below the cockpit had flooded with about 24" of rain water. See photos 3-22.

Surveyor has reviewed and considered the following, data, documents and items:

Information based on inspections of the subject boat on
09/04/2015, 10/12/2015, 10/13/2015 & 02/15/2016

Markel American Insurance Policy Number MHY00000219978

Documents from Markel American Insurance Company (MAIC 000001 -
000206)

Preliminary Report dated May 22, 2014 prepared by Richard A.
"Rick Fisher

Supplemental Report dated September 12, 2014 prepared by Richard
A. "Rick Fisher

Transcript of Deposition of Howard W. Scoggins, III

Repair Estimate #166 dated November 20, 2015 prepared by
Lighthouse Yacht Works, Houston Texas

Information learned during conversations with Jerry Mahle at
Lighthouse Yacht Works, Houston Texas

Plaintiff's Original Petition

Transcript of telephone call between Howard W. Scoggins, III and
a representative of Markel American Insurance Company

Matthews, Inc. invoice No. 64974 dated 5/19/2014

Photographs of the subject boat

DAMAGE/LOSS FOUND

1) Found: The Isotherm model 1006520 12/24 volt under counter
refrigerator submerged in rainwater. See photos 5-6.

Recommend: Renew refrigerator as original.

2) Found: Laminated plywood under counter galley module with
pantry doors and drawers water damaged and delaminated beyond
repair. See photos 5-6.

Recommend: Renew galley pantry module as original.

3) Found: Laminated plywood V-berth three drawer module water
damaged and delaminated beyond repair. See photos 7.

Recommend: Renew drawer module as original.

4) Found: Laminated plywood hanging locker module aft of galley water damaged and delaminated beyond repair. See photos 8.

Recommend: Renew hanging locker module as original.

5) Found: Port and starboard settee cushions were submerged in rain water. See photos 9-10.

Recommend: Renew settee cushions as original.

6) Found: Head and fiberglass module had been submerged in rainwater. See photos 11-12.

Recommend: Clean head module as needed.

7) Found: 120 volt stainless steel water heater, 12 volt fresh water pressure pump, head vacuum pump, plastic accumulator tank water filter, plumbing and wiring submerged in rainwater. See photos 13-14.

Recommend: Renew water heater, electric pumps and wiring, clean filter, accumulator tank, plumbing, renew hose clamps as needed as original.

8) Found: Marineair 7000 BTU 120 volt air conditioner submerged in rainwater. See photos 15.

Note:

Recommend: Renew air conditioner as original.

9) Found: All four ships lead acid batteries (3 gp29 and 1 gp24), battery wiring, selector switches, breakers and terminals submerged in rainwater. See photos 16-17.

Recommend: Renew all batteries, associated wiring and switches as original.

10) Found: Kohler Marine generator model # submerged in rainwater and damaged beyond repair. See photos 18.

Recommend: Renew generator, associated wiring and switches as original.

11) Found: 12 volt sea-water deck wash-down pump, holding tank 12 volt macerator pump, 12 volt bilge blower, plumbing, hose clamps, 12 volt and 120 volt wiring in machinery space submerged in rainwater. See photos 19-20.

Recommend: Renew deck wash-down pump, macerator pump, bilge blower, plumbing, hose clamps, 12 volt and 120 volt wiring as original.

12) Found: All below deck polyethylene tanks, water, fuel and holding tank dirty from being submerged in rainwater.

Recommend: Clean and flush all below deck tanks and storage spaces as needed.

13) Found: See additional damage and additional items affected in Estimate # 166 submitted by Lighthouse Yacht Works, Houston Texas.

CAUSE OF LOSS

The boat accidentally flooded with rain water when a plastic bag clogged drain plug hole while the boat was stored on trailer for the winter.

CONCLUSION AND OPINIONS

On or about May 16, 2014 after discovering the boat had flooded, Mr. Scoggins filed a claim with his insurance company Markel America Insurance Company. Markel assigned the claim to an independent marine surveyor Mr. Rick Fisher of Hawthorne Marine Survey Group.

Mr. Scoggins reported that he had little communication with Mr. Fisher and that he was unaware of when Mr. Fisher inspected his boat. In Mr. Fisher's preliminary report dated May 22, 2014. His "conclusion" at the end of his report assumed that Mr. Scoggins was negligent because he had stored the boat next to a "sloping roof" that allowed rain water to "accumulate" in the boat.

It is this surveyor's opinion that if Mr. Fisher had performed his due diligence as an independent marine surveyor by simply contacting and taking a statement from Mr. Scoggins. He would have learned that the boat was only at the Texas City Location for a few days prior to his inspection and that the sloping roof had nothing to do with this loss.

Mr. Scoggins reported that the boat had actually been stored on its trailer from January 2014 till May 2014 in front of his summer home at 1123 Tiki Drive on Tiki Island, Texas. See photos 25-26.

In Mr. Fishers preliminary report dated May 22, 2014 he also states in his conclusions that the damage to the boat was the result of "long term owner neglect". This term was also used in his supplemental report dated September 12, 2014 and it appeared to be the primary reason the claim was denied by the insurance company.

This surveyor strongly disagrees with Mr. Fishers claim that the damage to this boat was the result of "long term owner neglect".

It is this surveyor's opinion that the boat being stored on its trailer with the drain plug removed for the winter months between January and May is in no way considered "long term owner neglect".

The simple fact is, in southern states where heavy snow and ice is extremely rare, it is very common practice and not considered neglectful for trailerable boats to be pulled out of the water and stored outside on their trailers, uncovered with their drain plugs removed. In fact, during this surveyor's inspection of the location where Mr. Scoggins had reportedly stored the boat on Tiki Island between January and May of 2014, he found no less than ten uncovered boats stored on trailers in front of or beside homes in just a two or three block radius of that location. See photos 27-36.

It has further been asserted by Mr. Fisher and the insurance company that Mr. Scoggins should have covered the boat. It is this surveyor's opinion that covering a boat this size would be very difficult and a bit hazardous to say the least. A cover for a boat this type and size would have to be approximately fifty 50 feet long and approximately twenty two 22 feet wide. It would weigh over one hundred thirty 130 pounds and require numerous stiff battens or poles strategically placed under the cover to prevent it from sagging and filling with water. It would be subject to damage to the cover and to the boat once installed from high winds and heavy rain and it would require a minimum of two healthy agile men with at least two 2 six 6 foot step ladders to install on a windless day.

In conclusion this surveyor found that the water damage to this boat was not the result of "long term owner neglect". It is this surveyor's opinion that this loss was an unfortunate occurrence that resulted when the drain plug became blocked allowing the boat to become flooded with rain water possibly from only one heavy rain event. It was even stated in one of Mr. Fisher's reports that weather archives indicated during the time period between January and May 2014 this area had approximately 15.47 inches of rain.

It is this surveyor's opinion that because Mr. Scoggins did not discover the loss until he was ready to use the boat after winter storage should not have been a reason to deny the claim.

This surveyor has reviewed an estimate for repairs submitted by Lighthouse Yacht Works in the amount of \$90,828.09.

Based on his 35 years of experience with performing damage surveys and accident investigations of yachts and pleasure boats of all sizes, including those similar to the subject boat, his inspections of the subject boat, having made numerous repairs to boats similar to the subject boat, having worked many times with marine repair shops to effect repairs to and recondition boats similar to the subject boat, having reviewed many estimates for repairs to boats similar to the boat at issue, and based on his knowledge of and familiarity with marine repairs costs found in and around Galveston, Texas, it is this surveyor's opinion that the repairs and the cost of those repairs detailed in the estimate submitted by Lighthouse Yacht Works in the amount of \$90,828.09 are fair and both reasonable and necessary, and only cover items that are claim related.

PUBLICATIONS IN LAST 10 YEARS

Gulf Coast Mariner magazine April/May 2015 article "WHAT IS A MARINE SURVEY".

TESTIMONY IN LAST 4 YEARS

This surveyor recalls one lawsuit within the last 4 years in which testimony was offered: Ross v. Progressive Insurance Company in Harris County, Texas. This surveyor was retained by Progressive Insurance Company.

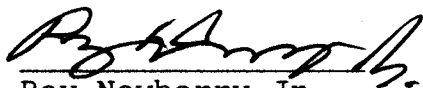
COMPENSATION FOR STUDY AND TESTMONY TIME

This surveyor's fee is not contingent on the results of this lawsuit. This surveyor's fee is based on actual hours spent at standard hourly rate of \$95.00.

NOTE: This surveyor reserves the right to amend this report as additional information is discovered and presented.

STATEMENT

Examination of this vessel was performed to determine the damage caused by accidental flooding with rain water while stored on trailer for winter. Unless otherwise specified, only exposed areas readily accessible without the removal of panels or fixed machinery were inspected. This survey is based on the facts presented and discovered, based on our opinion with no warranty either specified or implied. This survey conducted and signed without prejudice.



Roy Newberry Jr.
Attending surveyor
SAMS AMS YSC



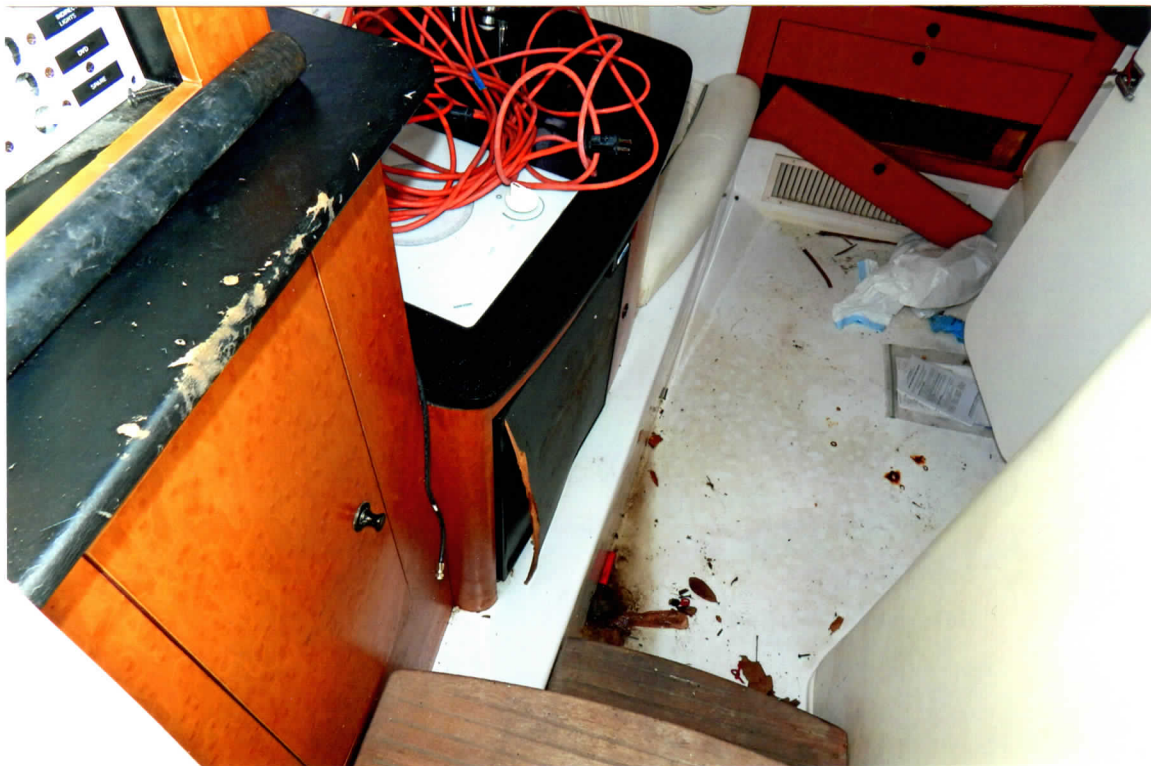
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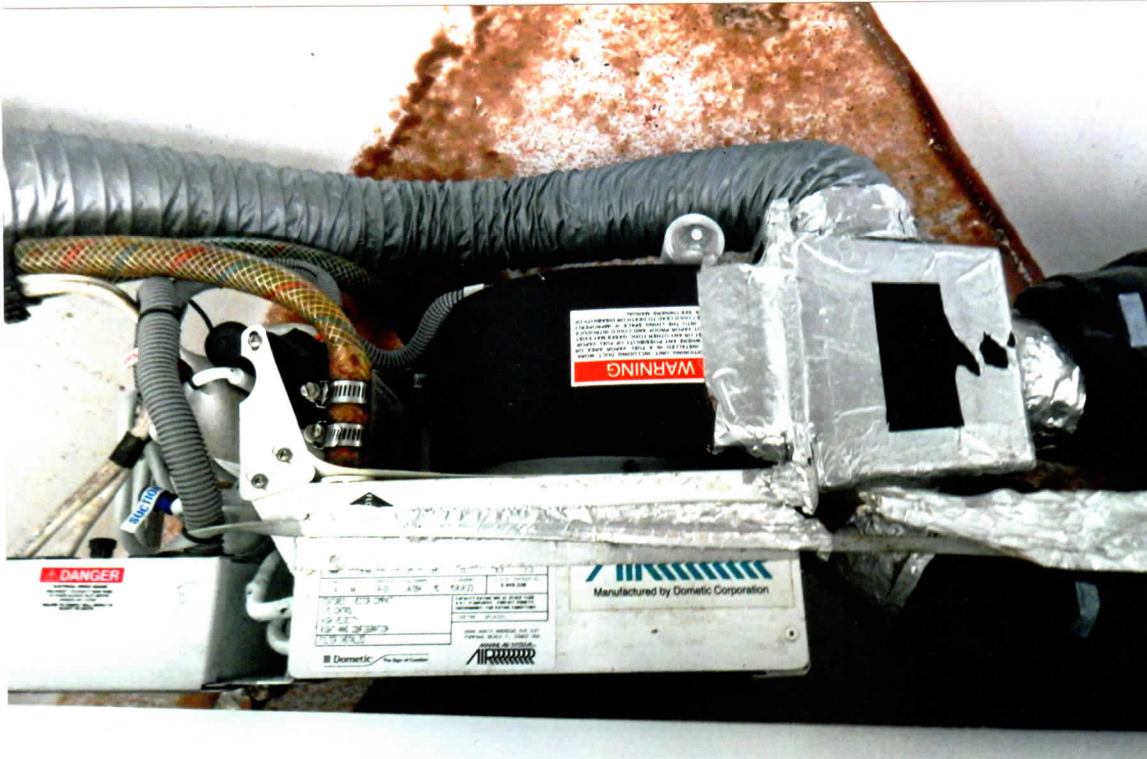
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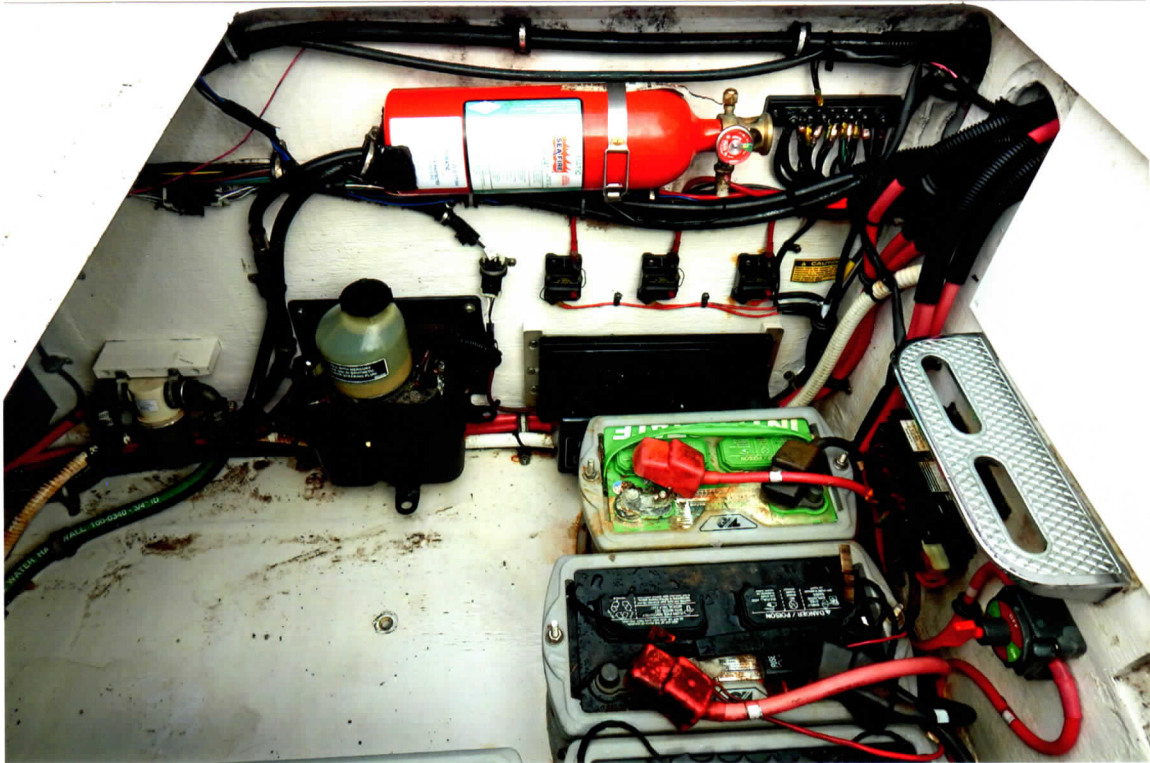
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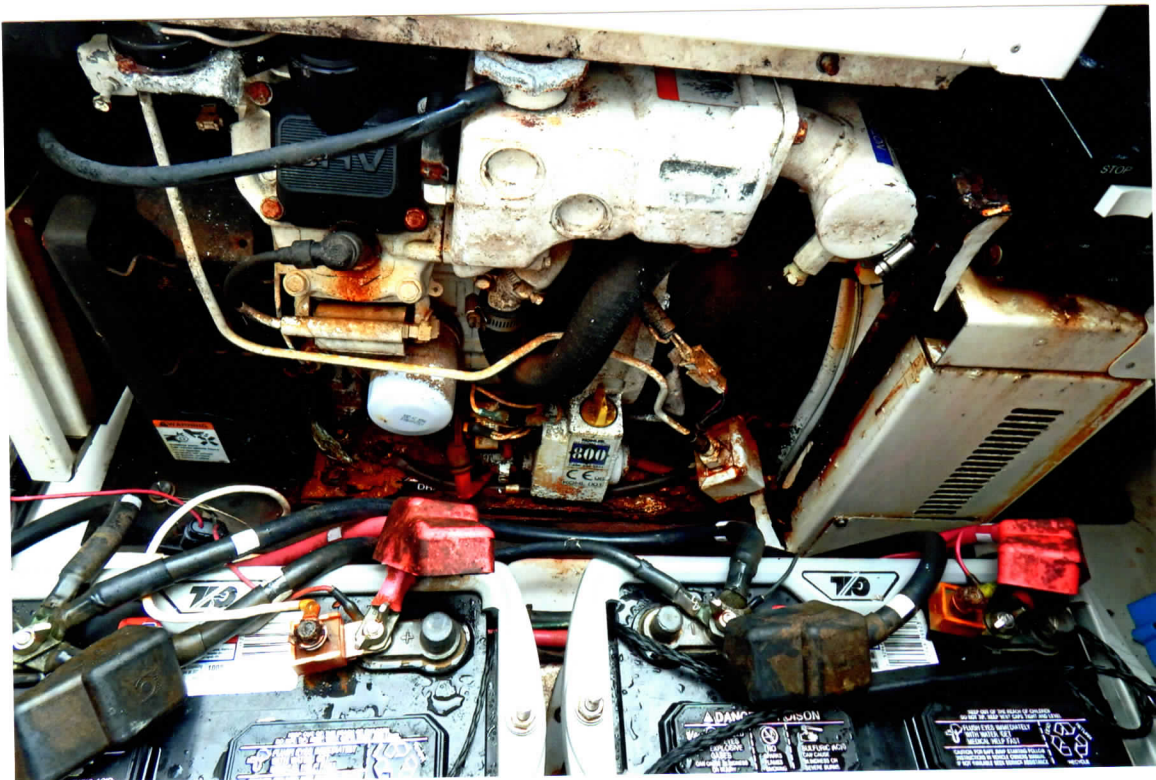
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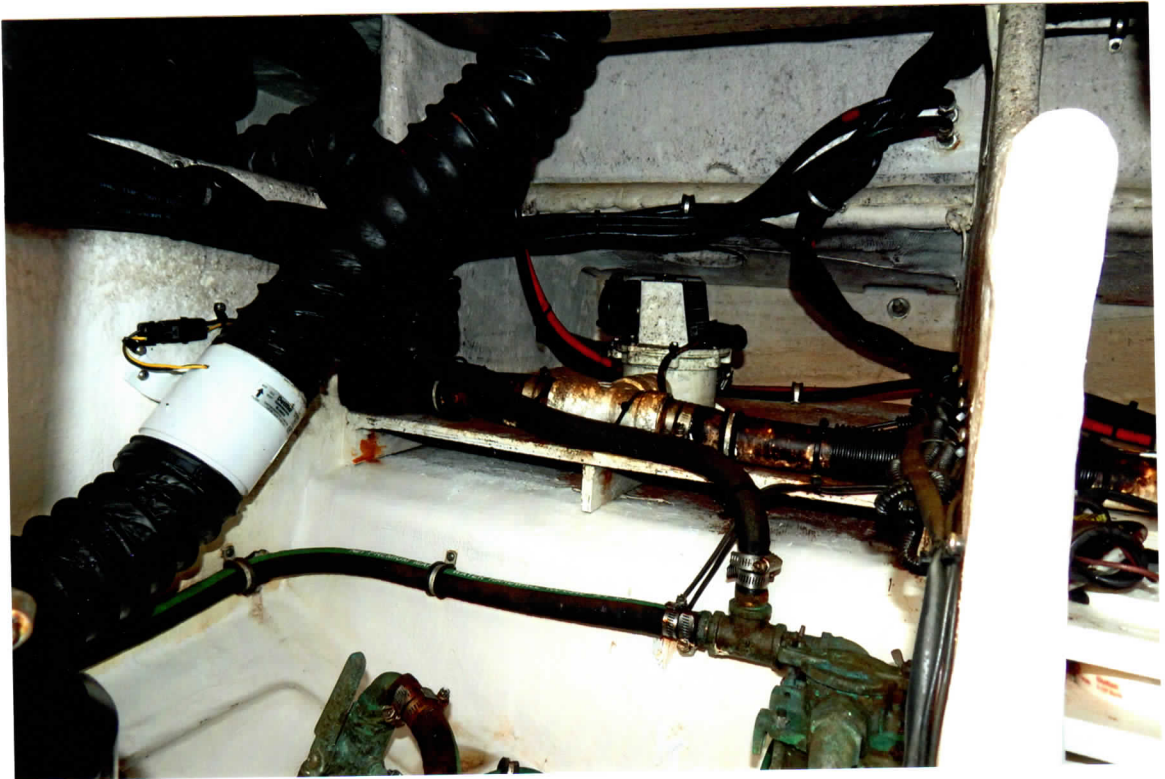
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Lighthouse Yacht Works

2816 Lighthouse Dr.
Houston, TX 77058**Estimate**

Date	Estimate #
11/20/2015	166

Name / Address
Newberry & Associates on behalf of: Howard Scoggins 1031 6th street North Texas City, TX 77590

			Project
Description	Qty	Rate	Total
Labor to R&R all items listed	525	95.00	49,875.00T
Parts		34,030.86	34,030.86T
See attached listing for itemized parts			
This is an ESTIMATE ONLY. As this is a sizable amount of work these numbers to replace and repair items may exceed original estimate.			
Sales Tax		8.25%	6,922.23
		Total	\$90,828.09

DONZI	Total
Hull #DNAF1037K506	
Isotherm Cooler-Frigibar	\$1,049.99
Marine Air AC	\$2,125.00
Under Bed Cabinets	\$1,800.00
Sony XS MP62 Speakers (2)	\$259.90
Port and Strb interior seating	\$1,200.00
Port Cabinet directly inside cabin	\$1,800.00
Atwood Sahara Shower Sump	\$93.61
Rule 500 Pump & Sure bail float switch (2)	149.68
Garman M260	\$1,099.99
Water Heater	\$421.00
Macerator Pump	\$138.40
Fresh Water Pump	\$147.47
Accumulator	\$135.00
RC36 Rate Compass w gyro	\$657.00
Group 27 Batteries (3)	\$750.00
Group 24 Battery (1)	\$250.00
4 Post Automatic Power Switch	\$280.00
Three Bank Procharger Salt water Charging Systems	\$511.48
Rule 2000 Bilge Bumps & Sure ball floats (2)	\$311.00
Washdown Pump	\$162.99
Kohler Generator	\$13,000.00
Freezer Control & Refrigerator	\$1,800.00
Power Steering Pump Kit	\$947.14
Tecma Head to pump & entire assembly	\$800.00
LLM-2 Fireboy Liquid Level Monitor	\$138.99
Bilge Light	\$400.00
Frigibar refrigeration compressors (2)	\$2,400.00
4" Engine room Blowers 10cuf (2)	\$61.98
50 Amp breaker (3)	\$161.31
Hoses for powere steering 3/8 hydrolic 15' (2)	\$600.00
On/Off Battery switch	\$31.95
3c AC Pump	\$298.99
Sierra gas remote filter and housing	\$47.99
	\$34,030.86